

The Next Generation's Voice: Community, Conflict, and Democracy

LISA BLOMGREN AMSLER^{*}

I. INTRODUCTION

- A. Collaborative Governance and the NextGen's Voice*
- B. What Challenges Face the NextGen?*

II. IS DEMOCRACY AT RISK FOR THE NEXTGEN? ELECTIONS AND VOTING RIGHTS

- A. What Factors Affect the Next Gen's Electoral Participation?*
- B. Community, Civic Engagement, and the NextGen*
- C. What Does the NextGen Want?*
- D. The Big Picture: Democracy and the NextGen from the Bottom Up*

III. THE NEXTGEN, ONLINE ENGAGEMENT, AND CIVIL DISOBEDIENCE

IV. WHAT INSTITUTIONAL CHANGES DO NEXTGEN MEMBERS ENVISION FOR OUR DEMOCRACY?

V. CONCLUSION

[A]ll too many people find themselves living amid a great period of social change, and yet they fail to develop the new attitudes, the new mental responses, that the new situation demands. They end up sleeping through a revolution.¹

– Martin Luther King, Jr.

^{*} Lisa Blomgren Amsler (formerly Bingham), Keller-Runden Professor of Public Service, Indiana University School of Public and Environmental Affairs, Bloomington, IN and Saltman Senior Scholar, William S. Boyd School of Law, University of Nevada Las Vegas, Las Vegas, NV. The author gratefully acknowledges the research assistance of Jessica Sherrod, doctoral student, Indiana University School of Public and Environmental Affairs.

¹ Martin Luther King, Jr., *Remaining Awake Through a Great Revolution*, Sermon Delivered at the Washington National Cathedral (Mar. 31, 1968).

I. INTRODUCTION

The Next Generation, Millennials and beyond (or NextGen), is now larger than the remaining Baby Boomers. Our democracy's future is in their hands. Are they receiving a democracy at risk? What do they face and what do they want? How can they shape public policy?

The field of dispute resolution is about helping people exercise voice to resolve conflict; it is broad enough to encompass voice in all the important decisions we face. The NextGen has an array of choices for how it will exercise voice to influence key public policies; it can participate across the policy continuum through collaborative governance. This essay will explore the NextGen in collaborative governance through elections, public and civic engagement, and civil disobedience. It urges the NextGen to reimagine the future, use the power its voice provides, and reclaim our democracy.

A. Collaborative Governance and the NextGen's Voice

For the health of democracy, the NextGen needs to make its voice heard in governance. Collaborative governance is an umbrella phrase that covers voice processes for stakeholders and the public to collaborate in the policy process.² Public administration scholars view the policy process as a continuum or stream.³ In the most general sense, the continuum includes making policy in the legislative branch upstream; implementing and managing policy midstream in the executive branch; and enforcing policy downstream in the judicial branch through adjudication. Within an administrative agency, the policy continuum includes the same three kinds of work: quasi-legislative action making policy and rulemaking, managerial work implementing policy, and quasi-judicial work enforcing it through administrative adjudication. Moreover, in the judicial branch, courts engage in quasi-legislative activity when they convene working groups to design an alternative dispute resolution (ADR) program and adopt related court rules.

Collaborative governance includes system designs through which public agencies can work with other units of federal, state, regional, or local government, the private and nonprofit sectors, civil society, and/or the

² This discussion is adapted from Lisa Blomgren Bingham, *Collaborative Governance: Emerging Practices and the Incomplete Legal Framework for Citizen and Stakeholder Voice*, 2009 J. OF DISP. RESOL. 269, 277–85 (2009).

³ EUGENE BARDACH, A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM SOLVING (3d ed. 2008).

public. This work includes identifying problems, issues and potential solutions, designing new policy frameworks for addressing them, working together on implementing programs, and using consensus-based approaches to enforce policies.⁴ These steps represent public work along the policy continuum including all three branches of government; we can also focus on the same steps within a single agency in the executive branch.

Collaborative governance differs from governance alone in that it uses negotiation, dialogue, and consensus-building in contrast to traditional command and control arrangements. Generally, who participates in collaboration depends on where the process occurs on the policy continuum. Upstream processes include public engagement, dialogue, and deliberation with the public. Participation moves from broad participation that includes the diffuse public upstream in public engagement, to stakeholders midstream in collaborative public management, to specific parties to a dispute downstream. Midstream in policy implementation and management, all three families of voice overlap. Midstream includes collaborative public and network management with stakeholders. It might include public engagement and environmental dispute resolution, for example in environmental permitting. Downstream, in the quasi-judicial arena, disputants participate through negotiation, mediation, and other forms of dispute resolution. Collaborative governance provides the NextGen with a rich array of opportunities to exercise voice, participate in governance, and influence the direction of critical decisions on public policy that will affect their lives and the lives of succeeding generations.

Federal⁵ and state⁶ public law and practice shape the political and structural context for collaborative governance. Administrative law can present significant legal barriers to change, adaptation, and innovation. State administrative law tends to mirror model statutes at the federal level. Congress controls federal administrative agencies by requiring them to comply with cross-cutting laws: the Administrative Procedure Act (APA),⁷

⁴ Several review articles on collaborative governance have been recently published. See Chris Ansell & Alison Gash, *Collaborative Governance in Theory and Practice*, 18 J. PUB. ADMIN. RES. & THEORY 543 (2008); Kirk Emerson, Tina Nabatchi, & Stephen Balogh, *An Integrative Framework for Collaborative Governance*, 22 J. PUB. ADMIN. RES. & THEORY 1 (2011).

⁵ Lisa Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 10 WIS. L. REV. 297 (2010). The following discussion is drawn in part from this article.

⁶ See generally Tina Nabatchi & Lisa Blomgren Amsler, *Direct Public Engagement in Local Government*, 44 AM. REV. PUB. ADMIN. 63S (2014).

⁷ 5 U.S.C. §§ 551–559, 701–706 (2006).

Freedom of Information Act (FOIA),⁸ Government in the Sunshine Act,⁹ Federal Advisory Committee Act (FACA),¹⁰ Negotiated Rulemaking Act (NRA),¹¹ Administrative Dispute Resolution Act (ADRA),¹² E-Government Act (E-Gov),¹³ the Paperwork Reduction Act (PRA), and others.¹⁴ Together, these statutes comprise a legal framework for agency action. This legal framework is two-dimensional; it sees the agency's world primarily as rulemaking and adjudication or, at best, negotiation and dispute resolution in their shadow. Administrative law reflects five key values related to the legitimacy of agency authority and the relationship between government and the governed: accountability, efficiency, transparency, participation, and collaboration. The major statutes above strike a balance among sometimes competing values. This legal framework did not historically contemplate contemporary collaborative governance. The statutes that come closest to authorizing its voice processes are the ADRA and NRA, which authorize negotiation, dispute resolution, and consensus-building processes. While public participation appears in hundreds of sections of the U.S. Code, these sections do not define its practice other than notice and comment in rulemaking.¹⁵

The absence of express authorization can present a barrier that can hinder the effectiveness of collaborative governance by limiting the capacity of the government to build consensus and political support for innovative changes. At the state level, state open meetings laws, commonly referred to as government-in-the-sunshine acts, have become increasingly mismatched with modern technology and local community needs. These laws can restrict the range of tools and structures for effective local governance by limiting open and creative interaction in engaging with the public and external stakeholders.¹⁶ Sunshine laws vary significantly by state,¹⁷ but research has

⁸ *Id.* at § 552.

⁹ *Id.* at § 552(b).

¹⁰ *Id.* at apps. §§ 1–16.

¹¹ *Id.* at §§ 561–570.

¹² *Id.* at §§ 571–584.

¹³ 44 U.S.C. § 3601 (2006).

¹⁴ *Id.* at § 3501.

¹⁵ Bingham, *supra* note 5, at 315–321.

¹⁶ Working Group on Legal Frameworks for Public Participation, *Making Public Participation Legal*, NAT'L CIVIC LEAGUE (Oct. 3, 2013), <https://www.nationalcivicleague.org/making-public-participation-legal/>. The Working Group was comprised of representatives of the American Bar Association Section of Dispute Resolution, Deliberative Democracy Consortium, International Association for Public Participation, International City/County Management Association, National Coalition for Dialogue and

yet to address the questions of participation, local governance, transparency, and innovation in light of national variations. Evidence from a California case study indicates that open-meeting laws hamper effective engagement and collaboration.¹⁸ Other research has built a legal framework for modernizing the sunshine laws,¹⁹ but these recommendations have yet to be implemented. These laws are independent from laws on home rule, which also vary from state to state.

While state and community-level statutes authorize open comment periods and public hearings, these designs for public engagement are not conducive to the deliberation, dialogue, and collaboration needed to unleash a community's creative potential, build consensus, and drive political support for change.²⁰ Some research even indicates that the tools and structures associated with state laws can be counterproductive to these ends.²¹ As a result, local governments do not have a clear picture of key limiting and enabling factors in the institutional context. For example, state laws regarding government in the sunshine and public meetings may have the unintended consequence of restricting innovative forms of collaboration among local government, civil society, and the public. Moreover, the law affecting local government varies from state to state, which raises questions of how best to meet local needs across differing institutional contexts.

There are many challenges that derive from the state and local legal context. First, some communities only meet minimum legal thresholds for engagement in order to avoid legal challenges.²² By contrast, in states that have modernized their legal structures to permit a wider range of engagement processes, communities have successfully aligned governance structures to meet a range of community needs. For example, the Oregon Citizens' Initiative Review allows a statewide random assembly of citizens to

Deliberation, National Civic League, National League of Cities, League of Women Voters, California League of Cities' Institute for Local Government, and the International Municipal Lawyers Association, among others. *See id.*

¹⁷ Suzanne J. Piotrowski & Erin Borry, *An Analytic Framework for Open Meetings and Transparency*, 15 PUB. ADMIN. & MGMT. 138, 140 (2010).

¹⁸ *See generally* LAURI DIANA BOXER-MACOMBER, CTR. FOR COLLABORATIVE POLICY, *TOO MUCH SUN? EMERGING CHALLENGES PRESENTED BY CALIFORNIA & FEDERAL OPEN MEETING LEGISLATION TO PUBLIC POLICY CONSENSUS-BUILDING PROCESSES* (2003).

¹⁹ Working Group on Legal Frameworks for Public Participation, *supra* note 16.

²⁰ Nabatchi & Amsler, *supra* note 6.

²¹ *Id.*

²² Working Group on Legal Frameworks for Public Participation, *supra* note 16.

deliberate on upcoming ballot initiatives to provide information for voters.²³ Preliminary evidence indicates that it is an effective structure for providing other citizens with a balanced, nuanced analysis in order to build consensus on community issues.²⁴ In addition, California has a citizen's jury model to review local government policies and programs through its civil grand jury oversight function.²⁵ Effective legal frameworks can enhance local political institutions and governance by allowing innovation, which enables local governments to better adapt to local needs.

Second, public laws may also fail to meet their intended purpose of enhancing transparency. Local governments increasingly rely on partnerships with private organizations, yet sunshine laws apply to public agencies, not private contractors, and hence may provide insufficient transparency mechanisms for private provision of public services.²⁶ Yet legislatures enacted the sunshine laws to recognize the public's right to know how local government makes decisions and implements public programs.

Finally, the sunshine laws written prior to the information age do not allow for the explosion of new technologies for government transparency and engagement. The development of civic technological tools is accelerating, specifically in the areas of open government and community

²³ Citizens' Initiative Review Commission; members; term of office; rules, ORS § 250.137 (2016).

²⁴ John Gastil & Robert Richards, *Making Direct Democracy Deliberative Through Random Assemblies*, 41 POL. & SOC'Y 253, 264–65 (2013).

²⁵ CAL. PENAL CODE §§ 888-892 (West 2016) (specifically § 888 provides that "a grand jury is a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county. Each grand jury or, if more than one has been duly impaneled pursuant to §§ 904.5 to 904.9, inclusive, one grand jury in each county, shall be charged and sworn to investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to § 914.1). The California grand jury exercises a civil oversight function. Stephanie A. Doria, Comment, *Adding Bite to the Watchdog's Bark: Reforming the California Civil Grand Jury System*, 28 PAC. L.J. 1115, 1120 (1997) (cited in Michael Vitiello and J. Clark Kelso, *Reform of California's Grand Jury System*, 35 LOYOLA L.A. L. REV. 513, 516 (2002)). See also Judicial Council of California, *Civil Grand Jury* <http://www.courts.ca.gov/civilgrandjury.htm> (accessed May 13, 2016).

²⁶ David H. Rosenbloom, *Reinventing Administrative Prescriptions: The Case for Democratic-Constitutional Impact Statements and Scorecards*, 67 PUB. ADMIN. REV. 28 (2007).

action.²⁷ The NextGen participates in online public engagement more than in-person voice and follows national news media more than local.²⁸ Without updates to public law, local governments may miss opportunities to harness the full potential of the information technology that has revolutionized the way people interact with information, one another, and organizations.

Well-designed collaborative governance processes can bring the NextGen's voice into the policy process. Collaborative governance can facilitate meaningful deliberative conversations across the generations to address and resolve conflict over policy. The NextGen should be taking advantage of and pushing for innovation in the legal framework, authorizing voice processes across the entire policy continuum. Using their voice in collaborative governance to influence the direction of policy, the NextGen can shape how we handle the extraordinary challenges we all face.

B. What Challenges Face the NextGen?

The NextGen faces an array of challenges very different from the Baby Boomers. Boomers benefited from post-WWII economic growth and an era of strong labor unions; however, they also faced a nuclear arms race, the Vietnam War, environmental pollution of air, water, and land, and periods of inflation and recession. The prospect of catastrophic nuclear war raised real fears, but the great powers appeared to step back from the brink in the Boomers' lifetime.

In contrast, for the NextGen climate change is a stark and present reality; the science and evidence now defy doubt.²⁹ The great majority of world governments unanimously committed in 2015 for the first time to important

²⁷ Mayur Patel, Jon Sotsky, Sean Gourley, & Daniel Houghton, *The Emergence of Civic Tech: Investment in a Growing Field*, KNIGHT FOUNDATION (Dec. 2013), <http://www.knightfoundation.org/features/civictech/>; Matt Leighninger, *Using Online Tools to Engage the Public*, IBM CTR. FOR THE BUS. OF GOV'T (2013), <http://www.businessofgovernment.org/report/using-online-tools-engage-public>.

²⁸ PEW RESEARCH CENTER, *MILLENNIALS: PORTRAIT OF GENERATION NEXT* 63–79 (2010), <http://www.pewsocialtrends.org/files/2010/10/millennials-confident-connected-open-to-change.pdf> (describing the 'always connected' generation and its use of online modalities).

²⁹ NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBTAINED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING* (2010).

goals for reducing greenhouse gases.³⁰ However, commentators suggest that these goals, even if achieved, are significantly less than what the world requires to avert the human suffering and continuing mass extinctions that will accompany anticipated global warming.³¹ At the time of this writing, it appears that 2015 will be the hottest year on human record. During December 2015, the North Pole reached a temperature above thirty-two degrees Fahrenheit and the melting point.³²

The NextGen is simultaneously living through extremely rapid technological change, globalization, and the accompanying economic disruption.³³ It has more student loan debt not dischargeable in bankruptcy than any previous U.S. generation (69% of 2013 grads, avg. \$28,400).³⁴ It has lived, and continues to live, through the Great Recession and accompanying unemployment and limited career options.³⁵ It also faces the most extreme income inequality in a century.³⁶ These are only a few of the major policy arenas in which life demands that the NextGen exercise empowered and authoritative voice in governance.

II. IS DEMOCRACY AT RISK FOR THE NEXTGEN? ELECTIONS AND VOTING RIGHTS

The NextGen faces systemic threats to democracy in the United States. During their lifetimes, NextGen members have seen the election of a

³⁰ Conference of the Parties, *Paris Agreement*, UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (2015), <http://unfccc.int/2860.php> (at the time of this writing, the agreement is not yet in force).

³¹ John Cassidy, *A Skeptical Note on the Paris Climate Deal*, NEW YORKER (Dec. 14, 2015), <http://www.newyorker.com/news/john-cassidy/skeptical-note-paris-climate-deal>.

³² Angela Fritz, *Freak Storm Pushes North Pole 50 Degrees Above Normal to Melting Point*, WASHINGTON POST (Dec. 30, 2015), <https://www.washingtonpost.com/news/capital-weather-gang/wp/2015/12/30/freak-storm-has-pushed-north-pole-to-freezing-point-50-degrees-above-normal/>.

³³ *Millennials Coming of Age*, GOLDMAN SACHS (2016), <http://www.goldmansachs.com/our-thinking/pages/millennials/>.

³⁴ INSTITUTE FOR COLLEGE ACCESS AND SUCCESS, *Student Debt and the Class of 2014* (2014), http://ticas.org/sites/default/files/pub_files/classof2014.pdf.

³⁵ U.S. BUREAU OF LABOR STATISTICS, BLS SPOTLIGHT ON STATISTICS: THE RECESSION OF 2007–2009 (2012), http://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf.

³⁶ See THOMAS PIKETTY, *CAPITAL IN THE 21ST CENTURY* (2013).

president who did not receive a majority of the popular vote;³⁷ given the nature of the electoral college, it is legally possible to elect a president with only 22% of the popular vote.³⁸ Some scholars and public intellectuals now view the United States as an oligarchy instead of a democracy.³⁹

Since 2006, significant changes in election law have affected our democracy. In *Citizens United v. Federal Election Commission*, the U.S. Supreme Court held that the First Amendment prohibited limits on campaign spending by nonprofit organizations; the Court effectively authorized unregulated spending to influence election outcomes.⁴⁰ A mere 158 families, “overwhelmingly white, rich, older and male,” contributed half of all campaign contributions toward the 2016 presidential election by October 2015.⁴¹ Meanwhile, Congress is shaped by gerrymandering and partisanship. In the current electoral system, more than 90% of House and 91% of Senate incumbents regularly get reelected.⁴² The state popular vote can be 51% for a political party’s candidates for members of the House of Representatives, but because of gerrymandering, that party can end up with only 33% of the elected members in its state’s delegation to Congress.⁴³ Members of

³⁷ Nate Silver, *Would Al Gore Have Won in 2000 Without the Electoral College?* NEW YORK TIMES (Sept. 20, 2011), http://fivethirtyeight.blogs.nytimes.com/2011/09/20/would-al-gore-have-won-in-2000-without-the-electoral-college/?_r=0 (reporting that “George W. Bush won the Electoral College in 2000 following the recount in Florida. But Al Gore received more popular votes — about 540,000 more than Mr. Bush nationally, or about 0.5 percent of all votes cast across the country.”). For a discussion of a national popular vote to elect the president, see Stanley Chang, *Recent Development: Updating The Electoral College: The National Popular Vote Legislation*, 44 HARV. J. ON LEGIS. 205 (2007).

³⁸ CGP Grey, *The Trouble with the Electoral College* (Nov. 7, 2011), https://www.youtube.com/watch?v=7wC42HgLA4k&index=13&list=PLQs5ohhass_TF9mgmqLie7FqqlFzOQc&feature=iv&src_vid=OUS9mM8Xbbw&annotation_id=annotation_on_286635.

³⁹ Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12(3) PERSPECTIVES ON POLITICS 564, 564–81 (2014); Paul Krugman, *Privilege, Pathology and Power*, NEW YORK TIMES (Jan. 1, 2016), <http://nyti.ms/1UjAG2h>.

⁴⁰ 558 U.S. 310, 311 (2010).

⁴¹ Nicholas Confessore, Sarah Cohen & Karen Yourish, *The Families Funding the 2016 Presidential Election*, N.Y. TIMES (Oct. 10, 2015), http://www.nytimes.com/interactive/2015/10/11/us/politics/2016-presidential-election-super-pac-donors.html?_r=0.

⁴² OPEN SECRETS, *Reelection Rates over the Years* (2015), <https://www.opensecrets.org/bigpicture/reelect.php>.

⁴³ This happened in North Carolina in 2012, when Democrats won 51 percent of the statewide vote and only got 4 of 13 House seats. FEDERAL ELECTION COMMISSION, OFFICIAL ELECTION RESULTS FOR THE UNITED STATES HOUSE OF REPRESENTATIVES

Congress must chase national money to fund election campaigns; candidates for Congressional seats no longer rely on local political parties. Given gerrymandering, the key to winning a Congressional district is in the party primary, which generally has low turnout; the result is that a candidate can effectively win an election with fifteen percent of the electorate in a primary.⁴⁴

Most Americans do not realize that there is no express individual right to vote in the U.S. Constitution.⁴⁵ Instead, voting eligibility is defined primarily by state law. To end the 100-year history of Jim Crow laws in the South following the Civil War and discrimination's impact on voting rights, Congress enacted the Voting Rights Act of 1965.⁴⁶ In *Shelby County v. Holder* (2013), the U.S. Supreme Court struck down section 4(b) as an unconstitutional coverage formula.⁴⁷ This formula defined which state and local governments the U. S. Department of Justice required to obtain preclearance under section 5 of the Voting Rights Act before they implemented changes in state election law. *Shelby* allows states to adopt new laws that the U. S. Department of Justice (USDOJ) had previously forbidden using preclearance under the Act.⁴⁸ This change puts the onus on voters to challenge laws through litigation after states and local governments implement them when the laws reduce or alter voting rights. These laws can affect voting rights through restricting ballot access through reducing early voting hours, requiring voter ID, and affecting the time and method for voter

(2012), <http://www.fec.gov/pubrec/fe2012/federalections2012.shtml>. See generally, <http://election.princeton.edu/2012/12/30/gerrymanders-part-1-busting-the-both-sides-do-it-myth/> and <https://services.math.duke.edu/projects/gerrymandering/>.

⁴⁴ Interview with former Indiana Congressman, the Hon. Rep. Lee Hamilton, Indiana University School of Public and Envtl. Aff., Center on Congress, in Bloomington, Ind. (Aug. 29, 2014).

⁴⁵ As the U.S. Supreme Court observed in *Bush v. Gore*, "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College. U.S. Const., Art. II, §1." 531 U.S. 98, 104 (2000). The original Constitution limited eligibility to vote to white men with property. Over time, amendments enlarged eligibility to vote to all white men with or without property, all men (15th Amendment), women (19th Amendment), and eighteen year-olds (26th Amendment), and barred poll taxes and restrictions on the right to travel through lengthy residency requirements.

⁴⁶ 42 U.S.C. §1973 (2015).

⁴⁷ *Shelby Cty., Ala. v. Holder*, 133 S. Ct. 2612, 2627–31 (2013).

⁴⁸ Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar E. Chavez, Barbara C. Jordan, William C. Velasquez, & Dr. Hector P. Garcia, Voting Rights Reauthorization and Amendment Act of 2006, 52 U.S.C. §10101.

registration. Studies show these laws have a disparate impact reducing voter turnout based on race, ethnicity, and national origin.⁴⁹

Since *Shelby*, states previously subject to section 5 of the Voting Rights Act's preclearance have modified election laws.⁵⁰ The USDOJ and a federal court previously barred Texas from implementing a photo ID law;⁵¹ after *Shelby*, Texas used the law to restrict voters in local elections and the March 2014 primaries.⁵² North Carolina waited for *Shelby* and then after the decision passed a more restrictive version of a bill that required photo ID, reduced early voting, and reduced a registration window used disproportionately by African-American voters to register and vote on the same day; the state legislature intentionally waited until it no longer had to seek preclearance.⁵³ Alabama passed a voter ID law in 2011 and implemented it after *Shelby* in 2014. In 2015, the state targeted thirty-one Department of Motor Vehicles (DMV) offices for closure, representing eight out of ten of counties with the highest percentages of registered non-white voters; it left voters in these counties without a DMV at which to obtain a required voter ID.⁵⁴ *Shelby* has raised concerns about voting discrimination across the country, including at least ten voting changes in seven states by 2015.⁵⁵ The USDOJ used to provide central recordkeeping for preclearance decisions; it was a single national repository for proposed changes and whether they passed muster under the Voting Rights Act. After *Shelby*, the one thousand flowers are blooming only subject to litigation after the fact under section 2. In contrast to the above states historically subject to

⁴⁹ NAT'L COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE 34 (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

⁵⁰ Tomas Lopez, *Shelby County: One Year Later*, BRENNAN CTR. FOR JUST. (2014), <http://www.brennancenter.org/analysis/shelby-county-one-year-later>.

⁵¹ *Veasey v. Abbott*, AM. CIV. LIBERTIES UNION (Aug. 5, 2015), <https://www.aclu.org/cases/veasey-v-abbott>.

⁵² Lopez, *supra* note 50.

⁵³ *League of Women Voters Versus North Carolina*, AM. CIV. LIBERTIES UNION (July 30, 2015), <https://www.aclu.org/cases/league-women-voters-north-carolina-et-al-v-north-carolina>.

⁵⁴ Athena Jones, *Clinton, Dems Slam Alabama Decision to Close Driver's License Offices*, CNN (Oct. 5, 2015), <http://www.cnn.com/2015/10/02/politics/alabama-dmv-drivers-license-hillary-clinton/>.

⁵⁵ Scott Simpson, *The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State*, LEADERSHIP CONF. ON CIV. AND HUMAN RTS (June 20, 2014), <http://www.civilrights.org/press/2014/VRA-Violations-Report.html>.

preclearance, California now automatically registers all eligible voters who have a driver's license or state ID unless they opt out.⁵⁶

In sum, the legal framework for democracy has taken decisive and destructive blows at the hands of the U.S. Supreme Court through *Citizens United* and *Shelby*.

A. What Factors Affect the Next Gen's Electoral Participation?

In some ways, the NextGen has grown more politically and civically engaged in recent years. Voting rates have risen rapidly in the past fifteen years.⁵⁷ Their interest in politics has risen, particularly since 9/11.⁵⁸ However, other evidence suggests the NextGen has grown increasingly disengaged. Despite gains in voting rates, the NextGen is still less likely to vote than its age peers in the 1970s.⁵⁹ Voting has also declined for the public at large, alongside a decline in party loyalty, party membership, and association memberships.⁶⁰ Voting is declining particularly at the local level,

⁵⁶ ASSEMB. BILL NO. 1461 (CAL. 2015).

⁵⁷ Russell J. Dalton, *Citizenship Norms and the Expansion of Political Participation*, 56 POL. STUDIES 76, 76–98 (2008); Dana R. Fisher, *Youth Political Participation: Bridging Activism and Electoral Politics*, 38 ANNUAL REV. OF SOCIOLOGY 119, 119–37 (2012); Robert H. Wicks, Jan LeBlanc Wicks, Shauna A. Morimoto, Angie Maxwell, & Stephanie Ricker Schulte, *Correlates of Political and Civic Engagement Among Youth During the 2012 Presidential Campaign*, 58(5) AM. BEHAV. SCI. 622, 622–44 (2014) (finding that in 2012, youth who were politically engaged appeared to have a strong interest in online media usage); THE CENTER FOR INFORMATION AND RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, *The Youth Vote in 2012* (2013), http://www.civicyouth.org/wp-content/uploads/2013/05/CIRCLE_2013FS_outhVoting2012FINAL.pdf.

⁵⁸ Thomas H. Sander & Robert D. Putnam, *Still Bowling Alone? The Post-9/11 Split*, 21(1) J. OF DEMOCRACY 9, 9–16 (2010).

⁵⁹ Constance Flanagan & Peter Levine, *Civic Engagement and the Transition to Adulthood*, 20(1) THE FUTURE OF CHILD. 159, 159–79 (2010).

⁶⁰ Joris Verhulst & Stefaan Walgrave, *The First Time is the Hardest? A Cross-National and Cross-Issue Comparison of First-Time Protest Participants*, 31(3) POL. BEHAV. 455, 457 (2009) (citing PIPPA NORRIS, *DEMOCRATIC PHOENIX: REINVENTING POL. ACTIVISM* (2002)) (“Institutional political participation is down: electoral turnout decreases (*ibid.*), and so do party memberships (Dalton and Wattenberg 2001), party loyalties (Mair et al. 2004), and associational memberships (Pharr 2000; Pharr and Putnam 2000). While conventional participation is losing its legitimacy and is perceived less as an instrument for social change, ever more and ever more diverse crowds of people consider lawful demonstrations as a tool for change and as a way to express their grievances or preferences.”).

where mostly white, old, better-off folks vote.⁶¹ If one adjusts for age, Millennials vote at about the same rates as Boomers did at that age, but Boomers vote more now.

Efforts to reduce turnout by limiting voting may have backfired by showing people how important voting is.⁶² Voter ID laws make voting harder for the NextGen as they are more mobile;⁶³ however, Voter ID may increase turnout for some groups.⁶⁴ The research has found mixed results. Increasing the cost of finding and getting to a polling place can reduce turnout.⁶⁵ Early voting alone does not appear to increase turnout.⁶⁶ In-person early voting increases inequality based on income.⁶⁷ No-excuse absentee voting and Election Day registration significantly increase turnout, while universal mail voting has positive, though less consistent, effects on turnout.⁶⁸ And, motor

⁶¹ Mike Maciag, *Voter Turnout Plummeting in Local Elections*, GOVERNING THE STATES AND LOCALITIES (Oct. 2014), <http://www.governing.com/topics/politics/gov-voter-turnout-municipal-elections.html>.

⁶² ANDREW J. PERRIN, AMERICAN DEMOCRACY: FROM TOCQUEVILLE TO TOWN HALLS TO TWITTER 111–13 (2014).

⁶³ Constance Flanagan, Andrea Finlay, Leslie Galloway, & Taehan Kim, *Political Incorporation and the Protracted Transition to Adulthood: The Need for New Institutional Inventions*, 65(1) PARLIAMENTARY AFF. 29, 38 (2012).

⁶⁴ Roger Larocca & John S. Klemanski, *U.S. State Election Reform and Turnout in Presidential Elections*, 11(1) ST. POL. & POL'Y Q. 76, 88 (2011).

⁶⁵ Henry E. Brady & John E. McNulty, *Turning Out to Vote: The Costs of Finding and Getting to the Polling Place*, 105(1) REV. AM. POL. SCI. 115 (2011) (finding that when Los Angeles changed polling places, it imposed costs that decreased voter turnout); John E. McNulty, Conor M. Dowling, & Margaret H. Ariotti, *Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters*, 17(4) POL. ANALYSIS 435 (2009) (consolidation of polling places in a New York town reduced turnout by seven percent).

⁶⁶ Joseph D. Giammo & Brian J. Brox, *Reducing the Costs of Participation: Are States Getting a Return on Early Voting?* 63(2) POLITICAL RESEARCH POL. RES. RESEARCH Q. 295 (2010) (early voting may offer increased convenience to those already likely to vote but does not increase turnout permanently); Roger Larocca & John S. Klemanski, *U.S. State Election Reform and Turnout in Presidential Elections*, 11(1), ST. POL. & POL'Y Q. 76, 88 (2011) (early in-person voting had a negative and statistically significant correlation with turnout in the 2000, 2004, and 2008 presidential elections).

⁶⁷ Elizabeth Rigby & Melanie J. Springer, *Does Electoral Reform Increase (or Decrease) Political Equality?*, 64(2) RES. POL. Q. 420, 430–32 (2011).

⁶⁸ Roger Larocca & John S. Klemanski, *U.S. State Election Reform and Turnout in Presidential Elections*, 11(1) ST. POL. & POL'Y Q. 76, 88 (2011) (using cost benefit analysis to examine voting reforms, authors analyze the burdens imposed by universal mail voting, permanent no-excuse absentee voting, nonpermanent no-excuse absentee voting, early in-person voting, voting, Election Day registration, and voter identification requirements).

voter registration and Election Day registration decrease voting inequality based on income.⁶⁹

These developments in election law have a disparate impact on NextGen minorities.⁷⁰ In the 2012 reelection of President Barack Obama, voting rates rose for black Americans; turnout exceeded the rates for non-Hispanic, white Americans.⁷¹ However, for NextGen black Americans, election and voting developments are shaped by an existing inequity in descriptive representation, or representation by elected officials of the same race. Pew notes that only thirty-five percent of black Americans are represented by someone of the same race; despite an increase in the diversity of Congress,⁷² underrepresentation continues to occur at the federal, state, and local levels.⁷³ At the local levels, African-Americans could achieve more descriptive representation through local elections and elections held in tandem with national elections, and by using district seats rather than at-large seats for local councils. Instead, there is minority vote dilution through multiple intentional and computer-aided redistricting techniques.⁷⁴ These techniques include at-large elections that dilute the vote and cracking, which is using multi-member districts that split a single heavily minority-majority district into two barely minority-majority districts. This makes it hard to convert minority voting power into wins. There is also packing, which is over concentrating minorities into a single district to reduce the number of representatives. State and local laws can require at-large voting instead of voting by district. Thus, state and local election laws on redistricting use cracking and packing to make it harder to elect black representatives and leave NextGen and all African-Americans, statistically significantly underrepresented in state or local legislative bodies.

⁶⁹ Rigby & Springer, *supra* note 67, at 430–32.

⁷⁰ Lisa Blomgren Amsler, *Covenant 6 Claiming Our Democracy: Ten Years Later*, in *THE COVENANT WITH BLACK AMERICA: TEN YEARS LATER* 148–52 (Tavis Smiley ed., 2016).

⁷¹ Thom File, *U.S. Census Bureau, The Diversifying Electorate – Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)* (May 2013), <http://www.census.gov/library/publications/2013/demo/p20-568.html>.

⁷² Jens Manuel Krogstad, *114th Congress is Most Diverse Ever*, PEW RESEARCH CENTER (Jan. 12, 2015), <http://www.pewresearch.org/fact-tank/2015/01/12/114th-congress-is-most-diverse-ever/>.

⁷³ Karen Shanton, *The Problem of African American Underrepresentation on Local Councils*, DEMOS (2014), <http://www.demos.org/sites/default/files/publications/Underrepresentation.pdf>.

⁷⁴ NAT'L COMM'N ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE 34 (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

Heads up, NextGen. Pay attention to the way that rules and election administration at the state and local level shape not only the state and local franchise, but also shape voting in elections for national office. The vote is an essential part of democracy. The vote is an individual's opportunity to exercise voice. Because voting is regulated by state law, only by exercising voice and influencing governance upstream in the legislative arena at the state and local government levels can you ensure that all of your cohort has the maximum opportunities to cast an effective vote.

B. Community, Civic Engagement, and the NextGen

Community engagement provides another avenue through which the NextGen can exercise voice and build leadership. Volunteerism is markedly high for youth today, possibly due to the lack of employment opportunities and expectations for public service in college applications.⁷⁵ However, despite a heightened interest in politics, their participation has declined in a variety of venues. NextGen members are less likely to interact with a political party; in addition, membership and meeting attendance in other groups have declined.⁷⁶ Participation in political parties and associations has also declined for the public at large.⁷⁷ Partly as a result of the Great Recession, there is an extended transition to adulthood that may make participation more difficult for youth today than generations past, and may

⁷⁵ Shirley L. Porterfield & Anne E. Winkler, *Teen Time Use and Parental Education: Evidence from the CPS, MTF, and ATUS*, 130 MONTHLY LAB. REV. 37 (2007) (while employment rates are down, volunteer activities are up); Robert D. Putnam, Carl B. Frederick, & Kaisa Snellman, *Growing Class Gaps in Social Connectedness Among American Youth* (2012), http://www.hks.harvard.edu/saguaro/research/SaguaroReport_DivergingSocialConnectedness_20120808.pdf (finding upper/middle class youth have rising involvement in family, school, church, and voluntary associations while youth from working class backgrounds are increasingly disconnected from these institutions).

⁷⁶ Robert H. Wicks, Jan LeBlanc Wicks, Shauna A. Morimoto, Angie Maxwell, & Stephanie Ricker Schulte, *Correlates of Political and Civic Engagement Among Youth During the 2012 Presidential Campaign*, 58(5) AM. BEHAV. SCIENTIST 622–44 (2014), <http://dx.doi.org/10.1177/0002764213515226>; Constance Flanagan & Peter Levine, *Civic Engagement and the Transition to Adulthood*, 20(1) THE FUTURE OF CHILD. 159–179 (2010), <http://dx.doi.org/10.1353/foc.0.0043>.

⁷⁷ Joris Verhulst & Stefaan Walgrave, *The First Time is the Hardest? A Cross-National and Cross-Issue Comparison of First-Time Protest Participants*, 31(3) POL. BEHAV. 455, 457 (2009) (citing PIPPA NORRIS, *DEMOCRATIC PHOENIX: REINVENTING POLITICAL ACTIVISM* (2002)).

have a more pronounced effect on disadvantaged youth.⁷⁸ The NextGen also moves and changes jobs more frequently, which delays settling down in a community.⁷⁹ As a result, the NextGen may have little opportunity to engage in civic life, learn the political landscape, and practice political skills.

The NextGen is less active in civic engagement (55% report they are not very engaged) compared to Boomers (only 34% say they are not very engaged), but volunteerism increases with age.⁸⁰ Ten percent of NextGen members report they are electoral specialists in their service, compared to 17% of the Boomers. While they are less active in civic engagement, the NextGen has undue experience with donating their time—through unpaid internships for the purpose of work experience in the absence of paid employment opportunities or because family members help them make connections and can afford to help with living expenses for unpaid internships.⁸¹

The NextGen's civic engagement, or lack thereof, is also important to the health of democracy, because community is key. Alexis De Tocqueville characterized American democracy as uniquely shaped by egalitarian and spontaneous community action.⁸² There is direct evidence from the authors of the *Federalist Papers* themselves that collaboration in divided government was a conscious design for promoting how we articulate and reconcile diverse interests to avoid the tyranny of the majority in voting.⁸³ The revealing language appears in *Federalist 51*, variously attributed to Hamilton or Madison:

⁷⁸ Constance Flanagan, Andrea Finlay, Leslie Galloway, & Taehan Kim, *Political Incorporation and the Protracted Transition to Adulthood: The Need for New Institutional Inventions*, 65 (1) PARLIAMENTARY AFF. 29–46 (2012), <http://dx.doi.org/10.1093/pa/gsr044>.

⁷⁹ *Id.*

⁸⁰ *Two Special Generations: The Millennials and the Boomers*, NATIONAL CONFERENCE ON CITIZENSHIP (2008), <http://ncoc.net/226> (finding as to civic engagement, Millennials are less active than Boomers but volunteerism increases with age).

⁸¹ Joanna Venator & Richard V. Reeves, *Unpaid Internships: Support Beams for the Glass Floor*, BROOKINGS INSTITUTION (2015), <http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/07/07-unpaid-internships-reeves>.

⁸² ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Phillips Bradley ed., Vintage Classics 1945).

⁸³ Lisa Blomgren Bingham & Rosemary O'Leary, *Federalist 51: Is the Past Relevant to Today's Collaborative Public Management?* 71(1) PUB. ADMIN. REV. 78–82 (2011).

It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable.⁸⁴

The NextGen can shape democracy not only by exercising their voice in government, but also by doing so within civil society and the private sector to build a common will of the community. The toxic nature of current political discourse and media coverage⁸⁵ has divided the country by making it difficult to find a shared truth.⁸⁶ This illustrates how vital it is to build a common will at the community level. How can the NextGen prevail in the face of challenges like climate change unless it finds a way to pull everyone together?

C. *What Does the NextGen Want?*

The NextGen is more pro-government, especially among women and minorities.⁸⁷ It views itself as unique and points to technology use, liberalism and tolerance, music and style, and smarts. The generation is generally less interested in material goods than their predecessors. In other words, other than electronics, they do not want stuff, even if it is inherited and has family sentimental value.⁸⁸ NextGens are slower to move out on their own, marry, and have children. They are owning less and sharing or renting more; fewer

⁸⁴ *Id.* at 80–81, quoting ALEXANDER HAMILTON, JOHN JAY, AND JAMES MADISON, *THE FEDERALIST PAPERS* 1787 (2011).

⁸⁵ Philip M. Fernbach, Todd Rogers, Craig R. Fox, & Steven A. Sloman, *Political Extremism is Supported by an Illusion of Understanding*, 24(6) *PSYCHOL. SCI.* 939–46 (2013).

⁸⁶ Lisa Blomgren Bingham, *When We Hold No Truths to be Self-Evident: Truth, Belief, Trust, and the Decline in Trials*, 2006(1) *J. DISP. RESOL.* 131–154 (2006).

⁸⁷ PEW RESEARCH CENTER, *supra* note 28, at 63–79.

⁸⁸ *Millennials Coming of Age*, *supra* note 33.

want to buy houses, cars, or assets.⁸⁹ They are digital natives. They go online to make price comparisons, seek product information, and read peer reviews, but do not have brand loyalty. They value health, exercising, and eating right. They seek to work for control, autonomy, values, and ideals, rather than simply for money.

There is a growing mass of news coverage about the coming Clash of the Titans: The Baby Boomers and the Millennials, the big and biggest generations respectively. Will Baby Boomers retire and suck all the money out of the Social Security safety net that the Millennials are working to fund? Will the Millennials rebel and refuse to pay up? Will Boomers refuse to retire and keep Millennials out of the good jobs? Will limited career and promotion opportunities leave the NextGen saddled with huge student loan debt they cannot discharge in bankruptcy? Are the Boomers and their materialistic lifestyles at fault for climate change?

There is ample human resource research on Millennials, part of the NextGen, in the workplace. The term Millennials itself is fraught with adverse stereotypes about employees who do not respect authority, do not commit to work their way up the ladder, and who are self-centered, unmotivated, and disloyal; however, research finds that they work well in teams, are motivated to make a difference in their organizations, want open and frequent communication with their supervisors, and have skills in new communications and other technologies.⁹⁰

The NextGen is more upbeat about the state of the nation. All of these strengths support the NextGen's leadership potential. If the NextGen engages in voice processes through collaborative governance in the policy process, there can be a meeting of the minds across the generations instead of a Clash of the Titans.

D. The Big Picture: Democracy and the NextGen from the Bottom Up

Marc Dunkelman⁹¹ writes what De Tocqueville saw in young America's democracy: We built this city -- on our neighbors.⁹² For each of us, he

⁸⁹ *Id.*

⁹⁰ Karen K. Myers & Kamyab Sadaghiani, *Millennials in the Workplace: A Communication Perspective on Millennials' Organizational Relationships and Performance*, 25(2) J. OF BUS. AND PSYCHOL. 225-38 (2010).

⁹¹ Marc J. Dunkelman is a fellow in public policy at Brown and senior fellow at the Bill, Hillary, and Chelsea Clinton Foundation. He worked on Capitol Hill, at think tanks in Washington, DC, and as a journalist published in the Washington Post, the Wall Street Journal, the Los Angeles Times, Politico, the Chronicle of Higher Education, the Harvard

describes three rings of connection with our neighbors. Inner Ring One held our family and close friends. Middle Ring Two held people we saw often at work or church, in play or public service, and in town. Outer Ring Three contained more distant contacts in a useful network. Ordinarily, the three-ringed circus encompassed about 150 people in a township, or what science says is the average number of slots the brain has for people.⁹³ A community's Middle Ring of social relationships was the foundation for our democracy.

Dunkelman describes three waves of cultural change, from agricultural to industrial to urban communities.⁹⁴ The problem is Wave Four. In our transition to a global, networked, and online life, that takes two salaries to support a family in the United States, we gave something up. According to Dunkelman, what is vanishing is the Middle Ring: all of us as good neighbors to each other.⁹⁵ Even the word neighborliness has changed; it used to mean Jimmy Stewart and Donna Reed welcoming the immigrant family to their new home with wine, bread, and salt.⁹⁶ Now it means respecting people's privacy, keeping the yard or balcony clean, and not making too much noise. It does not mean you know who your neighbors are.

Why? Dunkelman reports we are spending more time with our family and one or two close friends, and less time volunteering as a firefighter, at the Rotary Club, or in the League of Women Voters, the Elks, or the Oddfellows.⁹⁷ We are spending more time on our smartphones or online, and less time face-to-face with people who live in the same town. We are cocooning at home with our soul mates. We are building a thicker first ring as helicopter parents or boomerang kids moving back home. In the outer ring, we have one-dimensional connections with 'friends' on Facebook, our professional network on LinkedIn, or people who share our political views or hobbies elsewhere online.

Dunkelman builds a strong case for the corrosive effect that losing each other as neighbors is having on our democracy. We blame special interests,

Business Review, and National Affairs, among others. See <http://watson.brown.edu/people/visiting/dunkelman>, accessed May 13, 2016.

⁹² MARC J. DUNKELMAN, *THE VANISHING NEIGHBOR: THE TRANSFORMATION OF AMERICAN COMMUNITY* (2014).

⁹³ *Id.* at 90–94.

⁹⁴ *Id.* at 20–32.

⁹⁵ *Id.* at 113–26.

⁹⁶ Martha Stewart, Housewarming Gifts, <http://www.marthastewart.com/264340/housewarming-gifts> (citing the movie *It's a Wonderful Life*, directed by Frank Capra, and the scene shown here: <https://www.youtube.com/watch?v=uNQGMJbriHY>, accessed May 13, 2016).

⁹⁷ DUNKELMAN, *supra* note 92, at 127–39.

lobbyists, gerrymandering, partisanship, and money in politics. While these are real, Dunkelman argues that the 'Big Sort' through self-selected residence has allowed us to distance ourselves from people who are different and surround ourselves with only those who are like us and agree with us.⁹⁸ In other words, we have all chosen life in an echo chamber. This is not limited to physical gated communities. It includes choosing to live gerrymandered, picking a Red town or a Blue town. It includes selection bias in information sources: Fox News or MSNBC?

However, there is something missing from Dunkelman's important and persuasive account: The NextGen. He recognizes that voter turnout generally has declined over the past few decades. He observes that some people believe there is no point in voting because it will not make a difference. He even includes generational separation as part of the Big Sort; younger and older age groups do not interact as much. However, he does not focus specifically on how the NextGen's relationship to democracy is affected by the vanishing neighbor phenomenon.

If we are going to save our democracy, Dunkelman tells us we need to transform our institutions in light of Wave Four.⁹⁹ However, that transformation is likely to happen in the hands of the NextGen. Where is the NextGen's voice?

III. THE NEXTGEN, ONLINE ENGAGEMENT, AND CIVIL DISOBEDIENCE

The First Amendment protects the right to petition government and peacefully assemble in traditional public forums directly as to the federal government and through the Fourteenth Amendment as to state and local governments. Peaceful protest is an essential safety valve to protect the health of democracy. On a societal level, research indicates that people are using protests more widely.¹⁰⁰ Protesting may permit people to voice their concerns in a manner that is much more specific than voting for a bundle of issues on Election Day.¹⁰¹ Three strands of protest have emerged in recent years related to economic justice, racial justice, and environmental justice.

⁹⁸ *Id.* at 73–74, 134–36.

⁹⁹ *Id.* at 226–41.

¹⁰⁰ Neal Caren, Raj Andrew Ghoshal, & Vanesa Ribas, *A Social Movement Generation: Cohort and Period Trends in Protest Attendance and Petition Signing*, 76 AM. SOC. REV. 125 (2011) (finding growth in protest activity over time and generational effects in the increase in protest activity, but a larger rise in petition signing).

¹⁰¹ *Id.* at 126 (citing Russell J. Dalton, *Citizenship Norms and the Expansion of Political Participation*, 56 POL. STUD. 76, 93 (2008)).

Technological and societal changes have increased opportunities for engagement. Campaigns can use digital, social, and traditional media to engage youth, generally defined in this literature as under the age of 30.¹⁰² Social media plays a role in protests (e.g., Arab Spring).¹⁰³ There has been a shift in activism driven by social media and based on rights.¹⁰⁴ Though the internet appears to be widening the socioeconomic divide, it has helped narrow the age divide in political participation, providing youth with the means to participate in politics in new ways, like emailing or connecting with a representative through social media.¹⁰⁵ As these technologies become more accessible, these divides may narrow further. The NextGen also has brought us significant innovation in participation online. Protesters of industrial agriculture post videos of animal housing and slaughter on YouTube, bringing us state Ag-gag laws.¹⁰⁶ They participate in Hackathons and work as tech interns in cities.¹⁰⁷

The NextGen brought us Occupy Wall Street in 2011.¹⁰⁸ Following the 2008 crash leading to the Great Recession, the NextGen mobilized Occupy events across the United States in protest of the dramatic growth in income inequality over the preceding three decades. This represented the NextGen's recognition of economic injustice in that the social contract forged among labor, capital, and the state during the Great Depression and World War II had been shattered by the confluence of globalization and influence of capital on the state; the wealthiest 1% controlled two-thirds of America's wealth.¹⁰⁹ Gitlin suggests there was an inner movement comprised of anarchists and

¹⁰² Robert H. Wicks, Jan LeBlanc Wicks, Shauna A. Morimoto, Angie Maxwell, & Stephanie Ricker Schulte, *Correlates of Political and Civic Engagement Among Youth During the 2012 Presidential Campaign*, 58 AM. BEHAVIORAL SCIENTIST 622 (2014).

¹⁰³ Jennifer Oser, Marc Hooghe, & Sofie Marien, *Is Online Participation Distinct from Offline Participation? A Latent Class Analysis of Participation Types and Their Stratification*, 66 POL. RES. QUARTERLY. 91 (2013) (finding different people engage in online compared to offline participation).

¹⁰⁴ Kees Biekart & Alan Fowler, *Transforming Activisms 2010+: Exploring Ways and Waves*, 44(3) DEVELOPMENT AND CHANGE 527-46 (2013).

¹⁰⁵ Kay Lehman Schlozman, Sidney Verba, & Henry E. Brady, *Weapon of the Strong? Participatory Inequality and the Internet*, 8 PERSPECTIVES ON POLITICS 487 (2010).

¹⁰⁶ Matthew Shea, *Article: Punishing Animal Rights Activists For Animal Abuse: Rapid Reporting And The New Wave Of Ag-Gag Laws*, 48(3) COLUMBIA JOURNAL OF LAW AND SOCIAL PROBLEMS 1-29 (2015).

¹⁰⁷ See, e.g., Code for America, <https://www.codeforamerica.org>.

¹⁰⁸ Todd Gitlin, *Occupy's Predicament: The Moment and the Prospects for the Movement*, 64 THE BRITISH J. OF SOC. 3 (2013).

¹⁰⁹ *Id.* at 6.

democratic radicals and an outer movement among the broader majority of the population who saw the broken social contract.¹¹⁰ Uniquely, the Occupy movement reorganized “social decisions around directly democratic, ‘horizontal’ assemblies.”¹¹¹ The NextGen’s organizational structure was less hierarchical and more consensus-based.

The 2012 Trayvon Martin shooting in Samford, Florida created another moment of mobilization. The failure of the police and criminal justice system to punish shooter George Zimmerman could have resulted in violent protests, but instead peaceful protest through collaborative governance occurred.¹¹² A predominately white jury found Zimmerman justified by Florida’s ‘stand your ground’ law.¹¹³ Immediately after the shooting, Andrew Thomas, a former long-time executive director of a community mediation center who had retired to Samford and was working in city government, urged the city to reach out to the USDOJ Community Relations Service (CRS) in anticipation of protests of the racial injustice.¹¹⁴ Together with churches, nonprofits, and the CRS, local government arranged to provide services and support to the influx of people gathering to express outrage at the shooting of an unarmed and innocent teen. However, this peaceful protest gave birth to a change in organizing strategies through social media use.

NextGen members have organized protests with an accelerating speed in response to police shootings of Black men and children and death in jail of Black women. In-person protests on the street, mainstream media video, and social media video yielded “Hands up Don’t Shoot” in Ferguson, Missouri following the police shooting of unarmed Michael Brown in 2014. Again, the CRS provided conciliators and facilitators to work with community groups and foster a dialogue. The USDOJ Civil Rights Division conducted a year-long investigation into Ferguson police, local government, and municipal courts in response to protests and the grand jury’s failure to indict the police officer. It found systemic racism in the police force, city government policies, and municipal court procedures.¹¹⁵

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Nancy Rogers, Professor Emeritus of Law, The Ohio State University Moritz School of Law, Keynote Address at the *Schwartz Lecture*: Reducing Polarization: Whose Job is it? (Mar. 25, 2015) (recording available at <http://moritzlaw.osu.edu/programs/adr-old/caucus/article.php?ID=209&type=story&caucusID=37>).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ U.S. DEP’T OF JUSTICE: CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT (2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

These findings are directly related to larger issues of systemic racism in the criminal justice system and its impact on democracy. In 2010 estimates, there were 5.85 million people disenfranchised and disqualified from voting as a result of conviction of a felony, representing 2.5% of voting age population (about 1 out of 40 adults).¹¹⁶ Only about one-quarter is currently incarcerated; roughly four million people who are out of prison are disenfranchised. Of these four million, one million are African Americans. One in thirteen voting age African Americans are disenfranchised, or about 7.7 percent of Black adults compared to 1.8 percent of others.¹¹⁷ USDOJ is also investigating disparate impact based on race in public school discipline systems that send disproportionate numbers of young Black males into juvenile justice and criminal justice systems, ultimately resulting in their voting disenfranchisement upon conviction of a felony.¹¹⁸ In other words, people are wrongfully losing their right to vote through systemic racism in the larger criminal justice system.

This growing evidence of systemic bias in the criminal justice system and the absence of effective voice in the political system has given rise to what some call a new civil rights movement spread through social media as Black Lives Matter.¹¹⁹ Through smartphone video of police shootings or killings of unarmed Black men, the speed at which the video travels social media and protests occur has been steadily accelerating.¹²⁰ However, the practices are so pervasive that commentators say it will take a sea change in police training to alter what is perceived as acceptable use of force.¹²¹

¹¹⁶ *Felony Disenfranchisement*, THE SENTENCING PROJECT, <http://sentencingproject.org/template/page.cfm?id=133>.

¹¹⁷ NAT'L COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE 152 (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

¹¹⁸ U.S. COMM'N ON CIVIL RIGHTS, SCHOOL DISCIPLINE AND DISPARATE IMPACT: A BRIEFING BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS (2011), http://www.usccr.gov/pubs/School_Disciplineand_Disparate_Impact.pdf.

¹¹⁹ Janell Ross, *How Black Lives Matter Moved From a Hashtag to a Real Political Force*, WASH. POST: THE FIX (Aug. 19, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/08/19/how-Black-lives-matter-moved-from-a-hashtag-to-a-real-political-force/>.

¹²⁰ Interview with Grande Lum, Former Director, U.S. Department of Labor Community Relations Service on September 30 and October 1, 2015 at Indiana University School of Public and Environmental Affairs, Bloomington, Indiana.

¹²¹ Alison V. Hall, Erika V. Hall, & Jamie L. Perry, *Black and Blue: Exploring Racial Bias and Law Enforcement in the Killings of Unarmed Black Male Civilians*, 71(3) AM. PSYCHOLOGIST 175–86 (2016), <http://dx.doi.org/10.1037/a0040109>.

Protests occurred in NYC after the suffocation death of Eric Garner at the hands of police; this became “I Can’t Breathe.”

In support of environmental justice, the NYC Climate Change march in October 2014 brought together over 300,000 people in Manhattan to urge the United Nations to address global warming and climate change.¹²² The group 99Rise has seen supporters disrupt the U.S. Supreme Court oral argument in protest of *Citizens United* and money in politics on two occasions.¹²³ Its members again represent the NextGen. Edward Snowden, himself a member of the NextGen, put his life and future at risk by disclosing classified information about the National Security Agency’s rampant violation of the 4th Amendment through the collection of email and phone metadata on all U.S. residents.¹²⁴ Anonymous, a global hacking group, has engaged in forms of protest activity by hacking and disclosing the Twitter accounts of ISIS terrorists or supporters.¹²⁵ It engages in some online forms of civil disobedience and activism, notably in Egypt during the Arab Spring by hacking passwords for phone line access to the internet.¹²⁶

None of this activity is within or sanctioned by a governmental structure, nonprofit, or business organization. We have a long tradition of civil disobedience in the United States. When is breaking the law in support of stopping a larger injustice a moral use of voice? The research literature has not generally treated civil disobedience as public participation or public comment within the meaning of administrative procedure or administrative law.¹²⁷ Is it better viewed as one of the NextGen’s preferred forms of public engagement?

¹²² Lisa W. Foderaro, *Taking a Call for Climate Change to the Streets*, N.Y. TIMES (Sept. 21, 2014).

¹²³ The first occasion was in 2014. Lawrence Hurley And Joan Biskupic, *Unauthorized Video Of U.S. Supreme Court Protest Posted Online*, REUTERS (Thu Feb 27, 2014), <http://www.reuters.com/article/us-usa-court-videoidUSBREA1Q2AD20140227>. The second was in 2015. Richard Wolf, *Protest on Campaign Spending Disrupts Supreme Court*, USATODAY (Jan. 21, 2015), <http://www.usatoday.com/wlna/news/nation/2015/01/21/supreme-court-protest-citizens-united/22105669/>.

¹²⁴ See generally *NSA Files Decoded: Edward Snowden’s Revelations Explained*, THE GUARDIAN, <http://www.theguardian.com/us-news/the-nsa-files>.

¹²⁵ Gabriella Coleman, HACKER, HOAXER, WHISTLEBLOWER, SPY: THE MANY FACES OF ANONYMOUS (2014).

¹²⁶ *Id.*

¹²⁷ See generally Lisa Blomgren Bingham, *The Next Generation of Administrative Law: Building the Legal Infrastructure for Collaborative Governance*, 10 WISC. L. REV. 297 (2010) (examining the statutory provisions for public participation, public comment, and public engagement in the United States Code and finding no definition of public participation).

Yes, it may be, according to recent research. Protest and protesters have “become an alternative means for people to participate in politics beside the institutionalized channels of political participation...”¹²⁸

IV. WHAT INSTITUTIONAL CHANGES DO NEXTGEN MEMBERS ENVISION FOR OUR DEMOCRACY?

The NextGen needs to reimagine the future of its voice in democracy. NextGen activists have sought to achieve economic justice, racial justice, and environmental justice through protest and mobilization. It needs to mobilize to protect our democracy.

Election law represents the system rules that shape the legitimacy of a government that is democratically elected. In response to *Citizen's United*, the Supreme Court decision holding corporations are persons under the First Amendment and unleashing corporate money in politics, does the NextGen support a Constitutional Amendment, Constitutional Convention, or new Supreme Court appointments? Should we abolish the Electoral College and move to direct, or even online, voting for the President? Should we eliminate gerrymandering through Nonpartisan Redistricting Commissions like those in California and Arizona? Should Congressional districts' boundaries align with communities' legal boundaries? Should Congress revisit the Voting Rights Act? How should Congress regulate election laws nationwide?

Democracy starts with community. As to climate change, should the NextGen work for local government renewable energy utilities or local high speed broadband? More rooted Millennials might consider changing state laws to give municipal government more power. Local democracy might bypass corporations and depart from state restrictions on development and zoning for new innovative communal plans with zero emissions micro-houses and solar subsidies.

Philanthropic organizations are supporting NextGen efforts to brainstorm innovations in engaging the public voice for democracy. The Knight Foundation issued The News Challenge.¹²⁹ Through this forum NextGen

¹²⁸ Joris Verhulst & Stefaan Walgrave, *The First Time is the Hardest? A Cross-National and Cross-Issue Comparison of First-Time Protest Participants*, 31 POLITICAL BEHAVIOR 455, 457 (2009) (citing Pippa Norris, *DEMOCRATIC PHOENIX: REINVENTING POLITICAL ACTIVISM* (2002)).

¹²⁹ *The Knight Foundation News Challenge*, KNIGHT FOUND., <https://www.newschallenge.org> (last visited May 8, 2016) (The Knight News Challenge “supports transformational ideas that promote quality journalism, advance media

members have submitted ideas like “What would it take to get you to vote?” which involved partnering with unlikely voters to help them shape the 2015 municipal election in Las Cruces, N.M. Another project was “Open Sourcing the Tools of Civic Engagement.” This would give every candidate, organization, and citizen equal access to online organizing tools and essential information at zero cost of entry, leveling the playing field in elections and civic engagement. Software named DistrictBuilder Bot would build Congressional Districts and eliminate gerrymandering. The Society Library would serve as the central intelligence agency of the people, by the people, and for the people: using big data to solve big problems.¹³⁰

These are just a few innovative proposals from the NextGen. What more do NextGen brains hold?

V. CONCLUSION

As each generation before it has, the NextGen will shape our future. Voice is the peaceful means for addressing conflict over the challenges that face us all. The NextGen can exercise the voice, power, will, competency, and tools necessary to make a difference in our democracy. It can use voice both through collaborative governance and to broaden the legal framework supporting it. It can deliberate both in person and through online public engagement before, during, and after elections.

If we listen to de Tocqueville and Dunkelman, the NextGen should cut its leadership teeth within its local communities, where it can use its voice to build democratic and leadership skills.¹³¹ It needs to expand its negotiation, mediation, facilitation, and dispute resolution skills so that members of the NextGen can help communities build consensus. It can use voice strategically where it will reach the most people through viral videos, blogs, local news media, and apps. It can use voice across the policy continuum.¹³²

innovation, engage communities and foster the arts,” and that “democracy thrives when people and communities are informed and engaged.”).

¹³⁰ *Id.*

¹³¹ *Public Engagement Projects*, CITY OF VENTURA CAL., <http://www.cityofventura.net/involved/engagement> (last visited May 8, 2016) (including surveys of community needs, citizens, online engagement, and civic engagement).

¹³² President Obama’s Open Government Initiative has advanced the development of online engagement in the federal government, improving online comment in rulemaking through www.Regulations.gov and inviting citizen co-production of public work through data transparency using www.Data.gov. See Lisa Blomgren Amsler & Susanna Foxworthy, *Collaborative Governance and Collaborating Online: The Open Government*

THE NEXT GENERATION'S VOICE

And it can use voice through peaceful exercise of First Amendment rights and mobilizing activism. To address policy conflict in our communities and our democracy, we need the NextGen to speak up and help lead us forward.

Initiative in the United States, in PUBLIC ADMINISTRATION AND THE MODERN STATE: ASSESSING TRENDS AND IMPACT 189 (Eberhard Bohne et al. eds., 2014). California has followed this lead through state open government in www.data.CA.gov and local government innovation, for example, Menlo Park and Vallejo's use of participatory budgeting. See <http://www.menlopark.org> and www.participatorybudgeting.org respectively.

